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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2013-2014

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Michael D. Beam

v.

Ellen Ann Beam Taylor et al.

Appeal from Chilton Circuit Court  
(CV-09-0114)

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Michael D. Beam

v.

Ellen Ann Beam Taylor et al.

**Appeal from Chilton Circuit Court  
(CV-09-0025)**

BRYAN, Justice.<sup>1</sup>

In appeal no. 1120678, Michael D. Beam appeals from orders entered by the Chilton Circuit Court in a conservatorship proceeding. In appeal no. 1120679, Michael appeals a will-contest proceeding that is currently pending in the Chilton Circuit Court. For the reasons set forth herein, we dismiss both of Michael's appeals.

Procedural History

On November 18, 2004, Willodene Beam, the wife of James Troy Beam, and Michael, one of James and Willodene's sons, were appointed by the Chilton Probate Court as co-guardians of James and co-conservators of his estate. Before that, the probate court had appointed Fletcher D. Green as James's guardian ad litem. In January 2008, Willodene died, and, in March 2008, Michael was appointed as James's sole guardian and conservator. On March 31, 2008, at Michael's request, the Chilton Probate Court appointed Janice Hull to conduct an

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<sup>1</sup>This case was assigned to Justice Bryan on November 19, 2013.

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accounting of any and all financial transactions handled by Michael and Willodene from the date of their appointment on November 18, 2004, through March 20, 2008. In January 2009, James died and Fletcher Green, James's guardian ad litem, filed a motion for a final settlement of the conservatorship. On February 2, 2009, at Michael's request, the Chilton Probate Court ordered James's conservatorship to employ the accounting firm of Hull & Russell, P.C., to "perform and complete the final accounting" that was required following James's death. See § 26-5-7, Ala. Code 1975 (providing that "a final settlement of the conservatorship must be made" upon the death of the ward).

On January 26, 2009, James Daniel Beam ("Jim"), another son of James and Willodene, petitioned the Chilton Probate Court to probate James's will. On February 18, 2009, Ellen Ann Beam Taylor and Carol Sue Beam Rickels, James and Willodene's daughters, filed a will contest, a petition for appointment of a special administrator ad colligendum, and a "notice of removal" of the will contest pursuant to § 43-8-198, Ala. Code 1975.<sup>2</sup> On the same day, the Chilton Probate

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<sup>2</sup>We note that § 43-8-198 provides for the transfer, as opposed to the removal, of a will contest to the circuit court

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Court entered an order transferring the will-contest proceeding to the Chilton Circuit Court; that action was assigned case no. CV-09-0025. On May 21, 2009, the Chilton Circuit Court entered an order appointing David Karn as a special administrator ad colligendum in the will-contest proceeding.

In August 2009, Karn filed a motion in the Chilton Probate Court to remove the conservatorship to the Chilton Circuit Court. Karn's motion stated that his request was made pursuant to § 26-2-2, Ala. Code 1975, and he attached an affidavit stating that he was the administrator ad colligendum for the estate of James Troy Beam and that, in his opinion, the conservatorship could best be administered in the Chilton Circuit Court. On August 5, 2009, the Chilton Probate Court entered an order purporting to "transfer and remove" the conservatorship action to the Chilton Circuit Court. On August 27, 2009, the Chilton Probate Court transferred the conservatorship file to the Chilton Circuit Court, and, on the same day, the Chilton Circuit Court assigned that action case no. CV-09-0114. The Chilton Circuit Court ("the circuit  

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from the probate court.

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court") immediately ordered Michael "to provide a full statutory accounting of the conservatorship of James Troy Beam." On August 31, 2009, at the request of Carol Sue and Ellen Ann, the circuit court consolidated the conservatorship action and the will-contest action.

On November 10, 2009, Michael filed in the circuit court a "Petition for Final Settlement of Conservatorship[;] Claim by Conservator for Compensation[; and] Claim by Conservator for Reimbursement." Michael asked the circuit court to accept Hull's accounting for the period between November 18, 2004, and March 31, 2008,<sup>3</sup> and to accept the final accounting attached to his petition for the period from March 31, 2008, through February 28, 2009. Michael requested, among other things, "fair and just compensation to the Conservator for the faithful execution of his duties as Conservator"; an award "to the Conservator of reimbursement for those funds expended by him individually for benefit of [James] and [Willodene] during the period of the Conservatorship"; and "reasonable compensation for the personal services the Conservator

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<sup>3</sup>Although the probate court ordered an accounting for the period ending March 20, 2008, Michael filed an accounting for the period ending March 31, 2008.

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performed for the benefit of [James] and [Willodene] during the period of the Conservatorship."

Jim filed an objection to Michael's petition for final settlement of the conservatorship estate, arguing (1) that the petition did not contain the vouchers required by statute, (2) that the accounting submitted was "confusing, incomplete, and fail[ed] to account for all receipts and disbursements of the Conservator," and (3) that the accounting submitted contained "claims for compensation and reimbursements ... which are exorbitant, not supported by vouchers or other records, and on their face are contradictory of other disbursements asserted in the accounting." Ellen Ann and Carol Sue also filed an objection to Michael's final settlement of the conservatorship and to Michael's claim for compensation and reimbursement. They alleged, among other things, that Michael's final accounting was inconsistent with prior records he had produced and included numerous cash disbursements for which there was no explanation. On September 20, 2010, Ellen Ann and Carol Sue also filed a petition to assess liability against Michael as the conservator of James's estate.

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The circuit court conducted an ore tenus hearing on Michael's petition for final settlement, and the objections thereto, on August 24, 2011. On February 8, 2012, the circuit court entered an "Order on Petition for Approval of Conservator's Accounting, Claim for Compensation and Claim for Reimbursement." The circuit court purported to enter a judgment in favor of James's estate and against Michael in the amount of \$352,205, plus the costs of the proceeding.<sup>4</sup> The circuit court also purported to rule on Michael's request for compensation and reimbursement of expenses, and it reserved ruling on a request for attorney fees by Jim, Ellen Ann, and Carol Sue.

In May 2012, Jim, Ellen Ann, and Carol Sue filed petitions seeking attorney fees related to their objections to Michael's petition for final settlement. Michael objected to the requests for attorney fees and filed a "motion to reopen and reconsider order on petition for approval of conservator's accounting." On September 25, 2012, the circuit court conducted a hearing and entered an order denying Michael's

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<sup>4</sup>The circuit court also purportedly entered a judgment in favor of James's estate against Western Surety Company, the surety of Michael's conservator's bond, in the amount of the \$50,000 bond.

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motion to reopen and reconsider the order "for approval of conservator's accounting."

On October 2, 2012, the circuit court entered an order awarding Ellen Ann, Carol Sue, and Jim attorney fees they had incurred in contesting Michael's final settlement of James's conservatorship. The attorney for Ellen Ann and Carol Sue was awarded \$25,000; the attorney for Jim was awarded \$14,763.87. The circuit court ordered the administrator ad colligendum to pay those amounts from the estate in trust to the attorneys. The circuit court then entered a judgment in favor of James's estate against Michael in the sum of \$39,763.87 to reimburse the estate for the attorney fees and expenses awarded to Ellen Ann, Carol Sue, and Jim.

On October 25, 2012, within 30 days of the entry of the October 2, 2012, order, Michael filed a postjudgment motion pursuant to Rule 59, Ala. R. Civ. P., challenging, among other things, the assessment of attorney fees. Michael's motion was denied by operation of law on January 23, 2013. See Rule 59.1, Ala. R. Civ. P. On March 5, 2013, within 42 days of the day his postjudgment motion was denied by operation of law, Michael filed a notice of appeal in case no. CV-09-0144, the

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conservatorship proceeding (appeal no. 1120678), as well as in case no. CV-09-0025, the will-contest proceeding (appeal no. 1120679). This Court consolidated Michael's appeals on June 10, 2013, for the purpose of writing one opinion.

#### Jurisdiction

It is well settled that, except in limited circumstances not applicable here, this Court does not have jurisdiction to consider an appeal taken from a nonfinal judgment. See, e.g., James v. Rane, 8 So. 3d 286, 288 (Ala. 2008) (holding that this Court is without jurisdiction to hear an appeal from a nonfinal judgment); and Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 362 (Ala. 2004) ("When it is determined that an order appealed from is not a final judgment, it is the duty of the Court to dismiss the appeal ex mero motu." (internal quotation marks omitted)). It is undisputed that the circuit court has not entered a final judgment, or even conducted a trial, in case no. CV-09-0025, the will-contest proceeding. Because this Court does not have jurisdiction to consider an appeal taken from a nonfinal judgment, Michael's

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appeal in case no. 1120679 is due to be dismissed. See James, 8 So. 3d at 288.<sup>5</sup>

Regarding appeal no. 1120678, Michael's appeal from the conservatorship proceeding (case no. CV-09-0114), we conclude, for the reasons set forth herein, that the circuit court never obtained subject-matter jurisdiction over the conservatorship proceeding, that the circuit court's orders in case no. CV-09-0144 are therefore void, and that appeal no. 1120678 is also due to be dismissed.

"The court of probate from which the appointment of a conservator is derived has jurisdiction of the settlement, partial or final, of the accounts of the conservator." § 26-5-1, Ala. Code 1975. The circuit court purportedly gained subject-matter jurisdiction over the conservatorship proceeding after the probate court granted the administrator

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<sup>5</sup>It is possible that Michael filed a notice of appeal in the will-contest proceeding because some of the circuit court's orders, including the February 8, 2012, order, which concerned only the conservatorship proceeding, were entered in both case no. CV-09-0114 (the conservatorship proceeding) and case no. CV-09-0025 (the will-contest proceeding). We note that, although the will-contest proceeding and the conservatorship proceeding were consolidated in the circuit court, the will-contest proceeding and the conservatorship proceeding maintained separate identities and required the entry of separate judgments. See Ex parte 3M Co., 42 So. 3d 1228, 1231 n.4 (Ala. 2010).

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ad colligendum's petition to remove the conservatorship, allegedly pursuant to § 26-2-2, Ala. Code 1975, which provided the sole basis for the circuit court to obtain jurisdiction over the pending conservatorship proceeding in this case.

Section 26-2-2 states:

"The administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court."

This Court has recognized that "a marked similarity exists between the language of § 26-2-2 and the language of Ala. Code 1975, § 12-11-41, which governs the removal of the administration of a decedent's estate from the probate court to the circuit court." Ex parte Casey, 88 So. 3d 822, 828

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(Ala. 2012) (plurality opinion). Section 12-11-41, Ala. Code 1975, provides:

"The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, without assigning any special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court."

In Casey, this Court held that the circuit court did not have authority to remove "'the administration or conduct of [a] guardianship or conservatorship'" pursuant to § 26-2-2 because, at the time the petition for removal was filed in and granted by the circuit court, the probate court had not yet "act[ed] upon" the petition for letters of guardianship and conservatorship by creating a guardianship or conservatorship. 88 So. 3d at 829. We reached that conclusion after comparing the language of § 26-2-2 and § 12-11-41 and analogizing cases interpreting § 12-11-41 that concluded that the administration of an estate is subject to removal pursuant to § 12-11-41 only

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after the probate court "act[s] upon" a petition to administer an estate. 88 So. 3d at 829 (citing Ex parte Smith, 619 So. 2d 1374, 1376 (Ala. 1993)).

In DuBose v. Weaver, 68 So. 3d 814 (Ala. 2011), this Court concluded that the circuit court did not obtain subject-matter jurisdiction over the administration of an estate pursuant to § 12-11-41 because, at the time the estate administration was purportedly removed to the circuit court, the administration of the estate had not yet been initiated in the probate court and because the circuit court never "enter[ed] an order purporting to remove the administration of the estate from probate court." 68 So. 3d at 822. In DuBose, as in the present case, the petition for removal was filed in and was granted by the probate court, instead of the circuit court. This Court, in DuBose, stated that "the filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over the administration of an estate pursuant to § 12-11-41." Id. (final emphasis original). Thus, we concluded in DuBose that the circuit court never obtained subject-matter jurisdiction over the

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administration of the estate, that the judgment entered by the circuit court was void, and that the appeal was due to be dismissed.

Because the language from § 26-2-2 mirrors the language in § 12-11-41, we conclude here, as we did in DuBose, that the "filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over" a conservatorship proceeding under § 26-2-2. DuBose, 68 So. 3d at 822 (emphasis added) ("'"Unless expressly authorized so to do, a court has no authority to transfer a cause from itself to another court, and thereby give the other court possession of the case to hear and determine it, although the other court would have had jurisdiction of the cause if it had come to it by due process.' 21 C.J.S., Courts, § 502, p. 769 ....'" (quoting Allen v. Zickos, 37 Ala. App. 361, 364, 68 So. 2d 841, 843 (1953), and citing Ex parte Boykin, 611 So. 2d 322, 326 (Ala. 1992))). This conclusion is consistent with prior decisions of this Court applying § 26-2-2, which note that the proper procedure is for the petition for removal to be filed in and granted by the circuit court. See, e.g., Ex parte

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Casey, 88 So. 3d at 826-27 (noting that a petition for removal pursuant to § 26-2-2 was filed in the circuit court and granted by that court); Fuller v. Jackson, 519 So. 2d 936, 937 (Ala. 1988) (same); and McNairy v. McNairy, 416 So. 2d 735, 735-36 (Ala. 1982) (same). Thus, because in this case a petition for removal was not filed in the circuit court and "at no time did the circuit court enter an order purporting to remove the [conservatorship proceeding] from the probate court," DuBose, 68 So. 3d at 822, we conclude that the circuit court never obtained subject-matter jurisdiction over the conservatorship proceeding.

Furthermore, we note that the petition for removal was filed by Karn, the administrator ad colligendum of James's estate, and that Karn does not fall within the category of persons who may file a petition for removal pursuant to § 26-2-2 "without assigning any special equity." Section 26-2-2 provides that a petition for removal, without assigning any special equity, may be filed only by "the guardian or conservator ... or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward." Karn did not assign any special equity in his petition

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for removal. He simply stated that, in his opinion, "the conservatorship can best be administered in the Circuit Court of Chilton County under the Rules of Civil Procedure." This Court has held that a petition for removal filed in and granted by the circuit court was insufficient to convey subject-matter jurisdiction to the circuit court when the petitioner did not fall within the category of parties set forth in § 26-2-2 and no special equity had been assigned in the petition for removal. See Smith v. Smith, 248 Ala. 49, 51, 26 So. 2d 571, 571 (1946) (holding that the next of kin of a deceased ward did not have the absolute right to remove the administration of a guardianship proceeding from the probate court to the circuit court because the predecessor statute to § 26-2-2 did not include next of kin in the list of persons granted that absolute right). Thus we conclude that Karn's petition for removal, even if it had been properly filed in and granted by the circuit court, was insufficient to support removal of the conservatorship to the circuit court because Karn did not assign any special equity to support the petition for removal and he was not included in the list of persons in

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§ 26-2-2 who may petition for the removal of the conservatorship proceeding without assigning special equity.

For the foregoing reasons, we conclude that the circuit court never obtained subject-matter jurisdiction over the conservatorship proceeding and that the orders entered by the circuit court in case no. CV-09-0144 are void and therefore due to be vacated. Because a void order will not support an appeal, we dismiss appeal no. 1120678 and direct the circuit court to vacate the orders entered in case no. CV-09-0144. See Hunt Transition & Inaugural Fund, Inc. v. Grenier, 782 So. 2d 270, 274 (Ala. 2000). We note that, because the circuit court never obtained jurisdiction over the conservatorship proceeding, jurisdiction over that proceeding remains in the probate court.

#### Conclusion

Based on the foregoing, these appeals are dismissed.

1120678 -- APPEAL DISMISSED.

Stuart, Parker, Shaw, and Wise, JJ., concur.

Bolin and Murdock, JJ., concur specially.

Moore, C.J., dissents.

1120679 -- APPEAL DISMISSED.

Moore, C.J., and Stuart, Bolin, Parker, Murdock, Shaw, and Wise, JJ., concur.

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BOLIN, Justice (concurring specially in case no. 1120678).

I concur fully with main opinion. I write specially to elaborate on the definition of "remove" as it relates to the removal of the administration of a conservatorship or guardianship proceeding from the probate court to the circuit court, pursuant to § 26-2-2, Ala. Code 1975:

"The administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court."

(Emphasis added.)

It is important to note that the above statute is located in Chapter 2 of Title 26, Ala. Code 1975, the main chapter that provided for the "Appointment of Guardians" before the enactment of Act No. 87-590, Ala. Acts 1987, which is

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codified in Chapter 2A of Title 26, and substantially based upon the Uniform Probate Code, Article V, Parts 1, 2, 3, and 4 (1982 edition), and cited as the Alabama Uniform Guardianship and Protective Proceedings Act. I further note that even though § 26-2A-20(3), Ala. Code 1975, the definition section of the Alabama Uniform Guardianship and Protective Proceedings Act, § 26-2A-1 et seq., Ala. Code 1975, referred to above ("the Act") defines "court" as "[a] probate court of this state," this definition of "court" as being a "probate court" applies only to guardianship and protective proceedings under Chapter 2A. The Act not only did not supersede Chapter 2 but it also made no attempt to include any provision pertaining to removals addressed by § 26-2-2. Therefore, § 26-2-2 is not a part of "the Act" and is the only statute providing for the removal of guardianships or protective proceedings from the probate court to the circuit court. I further point out that the Comment to § 26-2A-31, Ala. Code 1975, setting out subject-matter jurisdiction of the Act, states that "[t]he subject matter jurisdiction described in this section affects the jurisdiction of the probate court only insofar as it applies to proceedings under this chapter

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and it does not purport to otherwise expand the jurisdiction of probate courts as established in other law." (Emphasis added.)

Section 12-11-30(4), Ala. Code 1975, provides that the circuit court exercises a general superintendence over the probate court, not the other way around. Although the removal statute does not expressly state that the petition for removal of the guardianship or conservatorship proceeding be filed in and ordered by the circuit court, it is apparent from decades of caselaw that the practice and procedure has been that a petition for removal is properly filed in, and if appropriate granted by, the circuit court. See, e.g., Smith v. Smith, 248 Ala. 49, 51, 26 So. 2d 571, 571 (1946) ("The proceedings here complain of an order of the circuit court in equity removing the administration of the guardianship ... from the probate to the equity court."); Ex parte Garrison, 260 Ala. 379, 380, 71 So. 2d 33, 35 (1954) ("Mrs. J.J. Burnett filed a petition in the Circuit Court ..., asking for an order transferring the guardianship ... to the aforesaid equity court. ... [A]n order was entered [by the Circuit Court] removing the aforesaid guardianship from the Probate Court to the Circuit Court, in

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Equity."); Fuller v. Fuller, 519 So. 2d 936, 937 (Ala. 1988) ("Fuller ... petitioned the Jefferson Circuit Court to remove the guardianships ... to the Jefferson Circuit Court."); Ex parte Coffee Cnty. Dep't of Human Res., 771 So. 2d 485, 486 (Ala. 2000) (noting that "Nichols ... filed ... a petition to remove the administration of the conservatorship to the circuit court" and that "[t]he circuit court removed the case"); and Ex parte Casey, 88 So. 3d 822, 826-27 (Ala. 2012) ("Jo Ann filed a 'Petition for Removal/Transfer' in the circuit court .... [T]he circuit court entered an order granting [the] petition to remove the guardianship proceeding from the probate court to the circuit court."); cf., however, Scott v. Kelley, 745 So. 2d 872 (Ala. 1999), a case in which the probate judge signed an order removing the case from the probate court to the circuit court. However, the probate court's unchallenged removal order in Kelley is an aberration and a clear deviation from settled law, as can be seen from the other cited cases.

The above cases, which involve removals pursuant to § 26-2-2 both before and after the effective date of the Act, demonstrate that the petition for removal of a conservatorship

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from the probate court to the circuit court has always been filed in, and relief on such petition, if any, ordered by, the circuit court. Regarding the Act and its failure to incorporate § 26-2-2 or a like removal provision, see Ex parte Casey, 88 So. 3d at 828 n. 5:

"When the Alabama Uniform Guardianship and Protective Proceedings Act ('[the Act]') was enacted in 1987, § 26-2-2 was amended to reflect the terminology used in [the Act]. Compare § 26-2-2, Ala. Code 1975, as amended, 1987 Ala. Acts, No. 87-590, with Tit. 21, § 26, Ala. Code 1940 (1958 Recomp.) ('The administration or conduct of any guardianship of a minor or person of unsound mind may be removed ....;'), the language of which remained unchanged when Tit. 21, § 26, was first recodified as § 26-2-2 in 1975."

The American Heritage Dictionary of the English Language 1099 (1969) defines the term "remove" as to "take away." Clearly, the probate court, under § 26-2-2, does not take the case away from itself and give it to the circuit court. To do so would impose upon the probate court itself the illogical duty of ordering that the "guardianship or conservatorship can better be administered in the circuit court than in the probate court." Rather, it is the circuit court that takes jurisdiction of the conservatorship or guardianship from the probate court, the court of original jurisdiction. See, e.g.,

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Ex parte Terry, 957 So. 2d 455, 459 (Ala. 2006) (regarding a petition to remove the administration of an estate from the probate court to the circuit court, this Court stated that "the circuit court failed to enter the order necessary to take jurisdiction of the estate from the probate court" (emphasis added)).

Accordingly, persons having standing under § 26-2-2 to remove a conservatorship or guardianship proceeding from the probate court to the circuit court do so by filing a petition for removal with the circuit court. The circuit court, if removal is appropriate, will then order the case removed from the jurisdiction of the probate court.

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MURDOCK, Justice (concurring specially in case no. 1120678).

I agree with the conclusion in the main opinion that the failure of the circuit court to have entered an order of removal means that the circuit court could not have acquired jurisdiction over the conservatorship. I write separately to state that my concurrence with the analysis of the main opinion should not be read as expressing any view as to whether, even if the circuit court had entered the order of removal here, it would have acquired jurisdiction over the conservatorship. Compare Ala. Code 1975, § 26-2-2 (providing that the administration of a guardianship or conservatorship "may be removed from the probate court to the circuit court, at any time before the final settlement thereof"), with Ala. Code 1975, § 12-11-41 (providing that the administration of a decedent's estate "may be removed from the probate court to the circuit court at any time before a final settlement thereof"); see also, e.g., Mobbs v. Scott, 233 Ala. 70, 71, 169 So. 698, 699 (1936) (stating, in regard to the precursor to § 12-11-41: "It is settled that said statute 'does not contemplate "the ouster of the jurisdiction of the probate courts, where that court has actually entered upon the

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exercise of its jurisdiction in and for a final settlement of estates." ... The words "at any time before a final settlement," found in the removal act, mean before proceedings for settlement begin, not before they are completed.'" (citation omitted)).

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MOORE, Chief Justice (dissenting in case no. 1120678).

I respectfully dissent. For the reasons that follow, I believe the circuit court has subject-matter jurisdiction over this conservatorship.

#### I. Statutory Construction

The language of § 26-2-2, Ala. Code 1975, does not expressly require that the petition to remove the conservatorship be filed in, and the removal order entered by, the circuit court. The statute reads:

"[A]n order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court."

§ 26-2-2, Ala. Code 1975 (emphasis added). The majority's construction of this statute goes beyond the plain language of the statute.

The majority opinion states that this Court has recognized that "'a marked similarity exists between the language of § 26-2-2 and the language of Ala. Code 1975, § 12-11-41, which governs the removal of the administration of

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a decedent's estate from the probate court to the circuit court.'" \_\_\_ So. 3d at \_\_\_ (quoting Ex parte Casey, 88 So. 3d 822, 828 (Ala. 2012) (plurality opinion)). The similarity of the language, however, does not require us to read words into § 26-2-2. The fundamental rule of statutory construction is that the court must "ascertain and effectuate" the intent of the legislature. Darks Dairy, Inc. v. Alabama Dairy Comm'n, 367 So. 2d 1378, 1380 (Ala. 1979). For this task,

"we must look to the entire Act instead of isolated phrases or clauses; and words are given their plain and usual meaning. Moreover, just as statutes dealing with the same subject are in pari materia and should be construed together, parts of the same statute are in pari materia and each part is entitled to equal weight."

367 So. 2d at 1380-81 (citations omitted). Both § 26-2-2 and § 12-11-41 provide for the removal of proceedings from the probate court. However, the statutes are in separate chapters of the Code, are codified from separate acts, and pertain to different subjects; they should not be construed together.

Section 12-11-41 provides that "an order of removal must be made by the court," without indicating which court. Section 12-11-41 is found in Title 12, Chapter 11, Article 2, of the Code of Alabama 1975, which concerns the jurisdiction of

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circuit courts. Thus, I agree that the petition for removal of estates should be filed in, and the petition granted by, the circuit court.

Section 26-2-2 states that "an order of removal must be made by the court or judge," without indicating which court, or which judge. Section 26-2-2 is found in Title 26, Chapter 2, of the Code of Alabama 1975, which lays out procedures for probate courts, not circuit courts. I conclude that, with reference to this specific statutory title and chapter, "the court or the judge" in § 26-2-2 refers to the probate court and probate judge, not the circuit court.

## II. The Nature of Subject-Matter Jurisdiction

The majority opinion concludes "that the circuit court never obtained subject-matter jurisdiction over the conservatorship proceeding." \_\_\_ So. 3d at \_\_\_. Both the probate court and the circuit court have subject-matter jurisdiction over this conservatorship, that is, "[j]urisdiction over the nature of the case and the type of relief sought." Black's Law Dictionary 931 (9th ed. 2009). Subject-matter jurisdiction "concerns a court's power to decide certain types of cases." Ex parte Seymour, 946 So. 2d

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536, 538 (Ala. 2006). The probate court has original and general jurisdiction over conservatorships. See §§ 26-5-1 and 12-13-1(b)(6), Ala. Code 1975. The circuit court is a court of general jurisdiction, see § 12-1-2, Ala. Code 1975. General jurisdiction is "[a] court's authority to hear a wide range of cases, civil or criminal, that arise within its geographic area." Black's Law Dictionary 929 (9th ed. 2009) (emphasis added).

The majority opinion has confused subject-matter jurisdiction, which is the power to decide certain types of cases, with a procedural issue. The circuit court has subject-matter jurisdiction over this case, regardless of whether the administrator ad colligendum filed the petition to remove the conservatorship in the circuit court or in the probate court.

### III. Precedent Does Not Support the Majority Opinion

The majority opinion relies upon the plurality opinion of Ex parte Casey, 88 So. 3d 822, 824 (Ala. 2012). "The precedential value of the reasoning in a plurality opinion is questionable at best." Ex parte Discount Foods, Inc., 789 So. 2d 842, 845 (Ala. 2001). The Casey opinion concluded that the

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circuit court lacked subject-matter jurisdiction to remove a guardianship from the probate court because

"the probate court ha[d] not entered an order creating a guardianship or conservatorship for Jo Ann. Logically, because no guardianship or conservatorship has been created for Jo Ann, there is no 'administration or conduct' of such guardianship or conservatorship to be removed from the probate court to the circuit court."

88 So. 3d at 830 (emphasis added). Here, the probate court created and then began administration of the conservatorship before ordering it removed to circuit court. Thus, the key fact in Casey on subject-matter jurisdiction is not present in this case. This difference, coupled with the limited precedential value of Casey, makes questionable Casey's support for the majority opinion.

The majority opinion also relies on DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011). Like the court in Casey, the probate court in DuBose did not initiate the administration of an estate. We concluded that the circuit court lacked subject-matter jurisdiction because "there was no pending estate administration that [the circuit court] could have removed from the probate court pursuant to § 12-11-41." 68 So. 3d at 822.

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The majority opinion relies upon this statement from DuBose: "'[T]he filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over the administration of an estate pursuant to § 12-11-41.'" \_\_\_ So. 3d at \_\_\_ (quoting DuBose, 68 So. 3d at 822). This statement in DuBose was a hypothetical contained in dicta.<sup>6</sup> The majority opinion applies this dicta and concludes that the circuit court lacks subject-matter jurisdiction because the administrator filed the petition for removal in the probate court, which court entered the order of removal. As explained above, § 12-11-41 requires the petition for removal of the administration of an estate to be filed in the circuit court, but § 26-2-2 does not require the same procedure for the removal of a conservatorship. DuBose thus gives only questionable support to the majority opinion.

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<sup>6</sup>That this statement is dicta is plain from these remarks: "Moreover, even were we to conclude that the administration of the estate was pending in the probate court when the Washington Circuit Court purported to assume jurisdiction over it, it does not appear that Sullivan's heirs filed their transfer/removal petition in the circuit court, and at no time did the circuit court enter an order purporting to remove the administration of the estate from the probate court." DuBose, 68 So. 3d at 822 (first emphasis added).

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The majority opinion also cites Smith v. Smith, 248 Ala. 49, 51, 26 So. 2d 571 (1946) (next of kin of deceased ward did not have an absolute right to removal, in the absence of a special equity). In Smith, the guardian objected to the next of kin's petitioning for the removal of a guardianship to the circuit court. Unlike Smith, the parties here have not objected to how the conservatorship was removed to the circuit court. The parties also did not object that the administrator ad colligendum is not on the list of persons who may petition for removal without assigning special equity. These procedural irregularities under § 26-2-2 do not affect the circuit court's subject-matter jurisdiction over this case.

#### VI. Conclusion

For these reasons, I believe this Court has improperly dismissed the appeal in case no. 1120678 and improperly ordered the circuit court's orders below vacated.